UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

--X **Case No.**

ELIZAVETA LEMBERG,

Plaintiff,

COMPLAINT

- against -

PLAINTIFF DEMANDS A TRIAL BY JURY

FABULOUS TOUCH, INC.,
FAINA SEREBRYANIKOVA, *Individually*,
and ROZALIA SEREBRYANIKOVA, *Individually*,

Defendants.

--X

Plaintiff, ELIZAVETA LEMBERG, by and through her attorneys, the LAW OFFICE OF YURIY MOSHES, P.C., upon information and belief, hereby complains as follows:

NATURE OF THE CASE

1. Plaintiff brings this action against Defendants pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and the New York State Labor Law, Articles 6 & 19 ("NYLL") for failure to pay wages earned in accordance with the agreed terms of employment and for **failure to pay minimum wage and overtime** and seeks to recover unpaid back wages, an additional amount as liquidated damages, and reasonable attorneys' fees and costs.

2. Plaintiff also complains pursuant to the Wage Theft Prevention Act, New York Labor Law § 195 *et seq.* and seeks to redress the damages she has suffered as a result of Defendants' **failure to provide her with written notice of wage rates**, including, inter alia, her rate of pay.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is proper under § 216(b) of the FLSA (29 U.S.C. § 216 (b)), §§ 1331 and 1343.

4. The Court has supplemental jurisdiction over plaintiff's claims brought under state law pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as it is a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

5. At all times relevant, Plaintiff ELIZAVETA LEMBERG ("LEMBERG") was and is a resident of the State of New York and the County of Kings.

6. At all times relevant, Defendant FABULOUS TOUCH, INC. ("FABULOUS TOUCH") was and is a domestic business corporation, duly existing pursuant to, and by virtue of the laws of the State of New York, with its principal place of business located at 1717 East 18th Street, #5S, Brooklyn, New York 11229.

7. At all times relevant, Defendant FAINA SEREBRYANIKOVA ("FAINA S.") was and is an employee of Defendant FABULOUS TOUCH, holding the position of "Owner."

8. At all times relevant, Defendant ROZALIA SEREBRYANIKOVA ("ROZALIA S.") was and is an employee of Defendant FABULOUS TOUCH, holding the position of "Manager."

9. At all times relevant, Defendants own and operate Fabulous Touch Spa located at 255 Brighton Beach Avenue, Brooklyn, NY 11235.

10. At all times relevant, Defendants FAINA S. was Plaintiff LEMBERG's supervisor and/or had supervisory authority over Plaintiff.

11. At all times relevant, Defendants ROZALIA S. was Plaintiff LEMBERG's supervisor and/or had supervisory authority over Plaintiff.

12. Defendants FABULOUS TOUCH, FAINA S. and ROZALIA S. are herein referred to together as "Defendants."

13. The FLSA defines "employer" to include any person acting directly or indirectly in the interest of an employer in relation to an employee and an employee is anyone who is suffered or permitted to work. As a result, including as further described below, both Defendants are liable as "employers" under the FLSA.

14. Defendants are also jointly and severally liable as joint employers under 29 C.F.R. §791.2 for the violations complained of herein

15. Upon information and belief, Defendants grossed more than $500,000 in the past fiscal year and further, during Plaintiff's employment with Defendants, she routinely engaged in interstate commerce or activities which facilitate or relate to interstate or foreign commerce while on the job.

MATERIAL FACTS

16. On or about June 2, 2015, Plaintiff LEMBERG was hired by Defendants to work as a "Receptionist" at Fabulous Touch Spa at the agreed upon hourly rate of $10 per hour.

17. Throughout her tenure with Defendants, Plaintiff LEMBERG was an exemplary employee, was never disciplined, always received compliments for her work performance, and got along well with all of her co-workers.

18. Nevertheless, Defendants did not provide Plaintiff LEMBERG with any sort of written notice regarding: her regular rate of pay, overtime rate of pay, how Plaintiff was to be paid, her "regular payday," the official name of the employer and any other names used for business, the address and phone number of the employer's main office or principal location, nor, allowances taken as part of the minimum wage (including, inter alia, tips).

19. Insofar as is relevant, from on or about June 2, 2015 to on or about December 30, 2015, the New York State minimum wage was $8.75 per hour. From December 31, 2015 to December 30, 2016, the New York State minimum wage was $9.00 per hour.

20. From on or about June 2, 2015 until on or about December 28, 2015, Plaintiff LEMBERG worked approximately twenty-eight (28) weeks ("the 28-week period"). The overtime rate during this period was one and one-half times Plaintiff's agreed upon hourly rate ($10/hr x 1.5 = $15/hr). However, throughout the 28-week period, Defendants wholly failed to pay Plaintiff LEMBERG her wages earned in accordance with the agreed terms of employment, in violation of the NYLL. Moreover, Defendants also failed to pay Plaintiff LEMBERG the minimum wage and overtime rate for many hours worked as required by law, in violation of the FLSA and NYLL.

21. By way of example, during Plaintiff LEMBERG's first two weeks of employment with Defendants, from on or about June 2, 2015 until June 13, 2015, Plaintiff worked a total of 92 hours at 46 hours per week. However, Defendants did not pay Plaintiff LEMBERG any wages during this two week period, and thus underpaid Plaintiff $800.00 of her agreed upon rate of pay ($10/hr x 40hrs = $400 x 2 = $800), and $180.00 for all overtime hours worked ($15/hr x 6hrs = $90 x 2 = $180) for a total of **$980.00**.

22. Thereafter, during the week of on or about June 14, 2015 until June 20, 2015, although Plaintiff LEMBERG worked a total of 48.5 hours, Defendants only paid Plaintiff a total of $280.00, which compensated Plaintiff for only 28 hours of work ($10/hr x 28 hours = $280.00). Accordingly Defendants underpaid Plaintiff LEMBERG **$247.50** ($10/hr x 40 hours = $400; $15/hr x 8.5 hours = $127.50; $400 + $127.50 = $527.50) for this week.

23. On or about June 21, 2015 until June 28, 2015, although Plaintiff LEMBERG worked a total of 45.5 hours, Defendants only paid Plaintiff a total of $250.00, which compensated Plaintiff for only 25 hours of work ($10/hr x 25 hours = $250.00). Accordingly Defendants underpaid Plaintiff LEMBERG **$232.50** ($10/hr x 40 hours = $400; $15/hr x 5.5 hours = $82.50; $400 + $82.50 = $482.50) for this week.

24. From on or about June 29, 2015 until July 7, 2015, Plaintiff LEMBERG worked a total of 42 hours. However, Defendants only paid Plaintiff a total of $250.00, which compensated Plaintiff for only 25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$180.00** ($10/hr x 40 hours = $400; $15/hr x 2 hours = $30; $400 + $30 = $430) for this week.

25. From on or about July 8, 2015 until July 13, 2015, Plaintiff LEMBERG worked a total of 42.5 hours. However, Defendants only paid Plaintiff a total of $265.00, which compensated Plaintiff for only 26.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$172.50** ($10/hr x 40 hours = $400; $15/hr x 2.5 hours = $37.5; $400 + $37.5 = $437.50) for this week.

26. From on or about July 14, 2015 until July 20, 2015, Plaintiff LEMBERG worked a total of 45.5 hours. However, Defendants only paid Plaintiff a total of $220.00, which compensated Plaintiff for only 22 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$262.50** ($10/hr x 40 hours = $400; $15/hr x 5.5 hours = $82.5; $400 + $82.5 = $482.50) for this week.

27. From on or about July 21, 2015 until July 30, 2015, Plaintiff LEMBERG worked a total of 44 hours. However, Defendants only paid Plaintiff a total of $220.00, which compensated Plaintiff for only 22 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$240.00** ($10/hr x 40 hours = $400; $15/hr x 4 hours = $60; $400 + $60 = $460) for this week.

28. During the week of on or about July 31, 2015 until August 6, 2015, although Plaintiff LEMBERG worked a total of 45 hours, Defendants only paid Plaintiff a total of $260.00, which compensated Plaintiff for only 26 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$215.00** ($10/hr x 40 hours = $400; $15/hr x 5 hours =

$75; $400 + $75 = $475) for this week.

29. From on or about August 8, 2015 to August 13, 2015, Plaintiff LEMBERG worked a total of 26 hours. However, Defendants only paid Plaintiff a total of $234.50, which compensated Plaintiff for only 23.45 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$25.50** ($10/hr x 26 hours = $260) for this week.

30. From on or about August 14, 2015 to August 21, 2015, Plaintiff LEMBERG worked a total of 45 hours. However, Defendants only paid Plaintiff a total of $225.00, which compensated Plaintiff for only 22.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$250.00** ($10/hr x 40 hours = $400; $15/hr x 5 = $75; $400 + $75 = $475) for this week.

31. From on or about August 24, 2015 to August 28, 2015, Plaintiff LEMBERG worked a total of 35 hours. However, Defendants only paid Plaintiff a total of $175.00, which compensated Plaintiff for only 17.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$175.00** ($10/hr x 35 hours = $350) for this week.

32. From on or about August 31, 2015 to September 4, 2015, Plaintiff LEMBERG worked a total of 29.5 hours. However, Defendants only paid Plaintiff a total of $200.00, which compensated Plaintiff for only 20 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$95.00** ($10/hr x 29.5 hours = $295) for this week.

33. From on or about September 9, 2015 to September 13, 2015, Plaintiff LEMBERG worked a total of 29 hours. However, Defendants only paid Plaintiff a total of $200.00, which compensated Plaintiff for only 20 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$90.00** ($10/hr x 29 hours = $290) for this week.

34. From on or about September 14, 2015 to September 20, 2015, Plaintiff LEMBERG worked a total of 40 hours. However, Defendants only paid Plaintiff a total of $255.00,

which compensated Plaintiff for approximately 25.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$145.00** ($10/hr x 40 hours = $400) for this week.

35. Thereafter, from on or about September 21, 2015 until September 24, 2015, Plaintiff worked a total of 12 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this week and thus underpaid Plaintiff **$120.00** ($10/hr x 12 hours = $120) for this week.

36. From on or about September 25, 2015 to October 2, 2015, Plaintiff LEMBERG worked a total of 40 hours. However, Defendants only paid Plaintiff a total of $300.00, which compensated Plaintiff for only 30 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$100.00** ($10/hr x 40 hours = $400) for this week.

37. From on or about October 4, 2015 to October 11, 2015, Plaintiff LEMBERG worked a total of 45.5 hours. However, Defendants only paid Plaintiff a total of $250.00, which compensated Plaintiff for only 25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$232.50** ($10/hr x 40 hours = $400; $15/hr x 5.5 = $82.50; $400 + $82.50 = $482.50) for this week.

38. From on or about October 12, 2015 until October 19, 2015, Plaintiff LEMBERG worked a total of 44.7 hours. However, Defendants only paid Plaintiff a total of $240.00, which compensated Plaintiff for only 24 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$230.50** ($10/hr x 40 hours = $400; $15/hr x 4.7 hours = $70.5; $400 + $70.5 = $470.50) for this week.

39. From on or about October 20, 2015 until October 25, 2015, Plaintiff worked a total of 24 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this week and thus underpaid Plaintiff **$240.00** ($10/hr x 24 hours = $240) for this week.

40. From on or about October 26, 2015 to November 1, 2015, Plaintiff LEMBERG worked a total of 24 hours. However, Defendants only paid Plaintiff a total of $232.50, which compensated Plaintiff for only 23.25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$7.50** ($10/hr x 24 hours = $240) for this week.

41. From on or about November 2, 2015 to November 8, 2015, Plaintiff LEMBERG worked a total of 39 hours. However, Defendants only paid Plaintiff a total of $250.00, which compensated Plaintiff for only 25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$140.00** ($10/hr x 39 hours = $390) for this week.

42. From on or about November 9, 2015 until November 15, 2015, Plaintiff worked a total of 36 hours that week. However, Defendants only paid Plaintiff a total of $200.00, which compensated Plaintiff for only 20 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$160.00** ($10/hr x 36 hours = $360) for this week.

43. From on or about November 16, 2015 to November 22, 2015, Plaintiff LEMBERG worked a total of 31 hours. However, Defendants only paid Plaintiff a total of $210.00, which compensated Plaintiff for only 21 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$100.00** ($10/hr x 31 hours = $310) for this week.

44. From on or about November 23, 2015 to November 29, 2015, Plaintiff LEMBERG worked a total of 26 hours. However, Defendants only paid Plaintiff a total of $130.00, which compensated Plaintiff for only 13 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$130.00** ($10/hr x 26 hours = $260) for this week.

45. From on or about November 30, 2015 to December 4, 2015, Plaintiff LEMBERG worked a total of 31 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this week and thus underpaid Plaintiff **$310.00** ($10/hr x 31 hours = $310) for this week.

46. From on or about December 5, 2015 to December 11, 2015, Plaintiff LEMBERG worked a total of 37 hours. However, Defendants only paid Plaintiff a total of $260.00, which compensated Plaintiff for only 26 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$110.00** ($10/hr x 37 hours = $370) for this week.

47. From on or about December 13, 2015 to December 20, 2015, Plaintiff LEMBERG worked a total of 40 hours. However, Defendants only paid Plaintiff a total of $210.00, which compensated Plaintiff for only 21 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$190.00** ($10/hr x 40 hours = $400) for this week.

48. From on or about December 21, 2015 until December 28, 2015, Plaintiff LEMBERG worked a total of 38 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$380.00** ($10/hr x 38 hours = $380) for this week.

49. In total, during the 28-week period, **Defendants underpaid Plaintiff LEMBERG a total of $5,761.00**.

50. Beginning on or about January 1, 2016, Defendants increased Plaintiff's hourly rate to $12 per hour. From on or about January 1, 2016 until on or about December 19, 2016, Plaintiff LEMBERG worked approximately fifty-one (51) weeks ("the 51-week period"). The overtime rate during this period was one and one-half times Plaintiff's agreed upon hourly rate ($12/hr x 1.5 = $18/hr).

51. However, throughout the 51-week period, Defendants wholly failed to pay Plaintiff LEMBERG her wages earned in accordance with the agreed terms of employment, in violation of the NYLL. Moreover, Defendants also failed to pay Plaintiff LEMBERG the minimum wage and overtime rate for many hours worked as required by law, in violation of the FLSA and NYLL.

52. By way of example, from on or about December 29, 2015 until January 3, 2016, Plaintiff LEMBERG worked a total of 35 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$420.00** ($12/hr x 35 hours = $420) for this week.

53. From on or about January 4, 2016 until January 11, 2016, Plaintiff LEMBERG worked a total of 39 hours. However, Defendants only paid Plaintiff a total of $212.50, which compensated Plaintiff for approximately 17.7 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$255.50** ($12/hr x 39 hours = $468) for this week.

54. From on or about January 14, 2016 until January 21, 2016, Plaintiff LEMBERG worked a total of 29 hours. However, Defendants only paid Plaintiff a total of $200.00, which compensated Plaintiff for approximately 16.6 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$148.00** ($12/hr x 29 hours = $348) for this week.

55. From on or about January 22, 2016 until January 29, 2016, Plaintiff LEMBERG worked a total of 16 hours. However, Defendants only paid Plaintiff a total of $127.50, which compensated Plaintiff for approximately 10.6 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$64.50** ($12/hr x 16 hours = $192) for this week.

56. From on or about January 31, 2016 until February 7, 2016, Plaintiff LEMBERG worked a total of 40 hours. However, Defendants only paid Plaintiff a total of $228.00, which compensated Plaintiff for only 19 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$252.00** ($12/hr x 40 hours = $480) for this week.

57. From on or about February 8, 2016 until February 13, 2016, Plaintiff LEMBERG worked a total of 25.5 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$306.00** ($12/hr x 25.5 hours = $306) for this week.

58. Thereafter, during the week of on or about February 14, 2016 until February 21, 2016, although Plaintiff LEMBERG worked a total of 40.25 hours, Defendants only paid Plaintiff a total of $264.50, which compensated Plaintiff for only 22 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$220.00** ($12/hr x 40 hours = $480; $18/hr x .25 hours = $4.50; $480 + $4.50 = $484.50) for this week.

59. From on or about February 22, 2016 until February 28, 2016, Plaintiff LEMBERG worked a total of 32 hours. However, Defendants only paid Plaintiff a total of $210.00, which compensated Plaintiff for only 17.5 hours of work. Accordingly, Defendants underpaid Plaintiff **$174.00** ($12/hr x 32 hours = $384) for this week.

60. From on or about February 29, 2016 until March 6, 2016, Plaintiff LEMBERG worked a total of 30.5 hours. However, Defendants only paid Plaintiff a total of $230.00, which compensated Plaintiff for approximately 19.2 hours of work. Accordingly, Defendants underpaid Plaintiff **$136.00** ($12/hr x 30.5 hours = $366) for this week.

61. From on or about March 7, 2016 until March 13, 2016, Plaintiff LEMBERG worked a total of 33.5 hours. However, Defendants did not pay Plaintiff any wages during this time period. Accordingly, Defendants underpaid Plaintiff **$402.00** ($12/hr x 33.5 hours = $402) for this week.

62. From on or about March 14, 2016 until March 20, 2016, Plaintiff LEMBERG worked a total of 32.5 hours. However, Defendants only paid Plaintiff a total of $260.00, which compensated Plaintiff for approximately 21.66 hours of work. Accordingly, Defendants underpaid Plaintiff **$130.00** ($12/hr x 32.5 hours = $390) for this week.

63. From on or about March 21, 2016 until March 27, 2016, Plaintiff LEMBERG worked a total of 32 hours. However, Defendants only paid Plaintiff a total of $222.50, which compensated Plaintiff for only 18.5 hours of work. Accordingly, Defendants underpaid

Plaintiff **$161.50** ($12/hr x 32 hours = $384) for this week.

64. From on or about March 28, 2016 until April 3, 2016, Plaintiff LEMBERG worked a total of 33 hours. However, Defendants only paid Plaintiff a total of $214.50, which compensated Plaintiff for approximately 17.88 hours of work. Accordingly, Defendants underpaid Plaintiff **$181.50** ($12/hr x 33 hours = $396) for this week.

65. From on or about April 4, 2016 until April 10, 2016, Plaintiff worked a total of 30 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$360.00** ($12/hr x 30 hours = $360) for this week.

66. From on or about April 18, 2016 until April 24, 2016, Plaintiff worked a total of 27.5 hours. However, Defendants only paid Plaintiff a total of $187.55, which compensated Plaintiff for approximately 15.6 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$142.45** ($12/hr x 27.5 hours = $330) for this week.

67. From on or about April 25, 2016 until May 1, 2016, Plaintiff LEMBERG worked a total of 56.5 hours. However, Defendants only paid Plaintiff a total of $245.00, which compensated Plaintiff for approximately 20.4 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$532.00** ($12/hr x 40 hours = $480; $18 x 16.5 hours = $297; $480 + $297 = $777) for this week.

68. From on or about May 2, 2016 until May 8, 2016, Plaintiff worked a total of 26.5 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$318.00** ($12/hr x 26.5 hours = $318) for this week.

69. From on or about May 9, 2016 until May 15, 2016, Plaintiff LEMBERG worked a total of 29.5 hours. However, Defendants only paid Plaintiff a total of $215.00, which compensated Plaintiff for approximately 17.9 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$139.00** ($12/hr x 29.5 hours = $354) for this week.

70. From on or about May 16, 2016 until May 22, 2016, Plaintiff LEMBERG worked a total of 34 hours. Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$408.00** ($12/hr x 34 hours = $408) for this week.

71. From on or about May 30, 2016 until June 5, 2016, Plaintiff LEMBERG worked a total of 23.5 hours. However, Defendants only paid Plaintiff a total of $205.00, which compensated Plaintiff for approximately 17.1 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$77.00** ($12/hr x 23.5 hours = $282) for this week.

72. From on or about June 6, 2016 until June 12, 2016, Plaintiff LEMBERG worked a total of 43.5 hours. However, Defendants only paid Plaintiff a total of $255.00, which compensated Plaintiff for approximately 21.25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$288.00** ($12/hr x 40 hours = $480; $18 x 3.5 hours = $63; $480 + $63 = $543) for this week.

73. From on or about June 13, 2016 until June 19, 2016, Plaintiff worked a total of 39.5 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$474.00** ($12/hr x 39.5 hours = $474) for this week.

74. From on or about June 20, 2016 until June 26, 2016, Plaintiff LEMBERG worked a total of 46.5 hours. However, Defendants only paid Plaintiff a total of $260.00, which compensated Plaintiff for approximately 21.66 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$337.00** ($12/hr x 40 hours = $480; $18 x 6.5 hours = $117; $480 + $117 = $597) for this week.

75. From on or about June 27, 2016 until July 3, 2016, Plaintiff LEMBERG worked a total of 39 hours. However, Defendants only paid Plaintiff a total of $182.50, which compensated Plaintiff for approximately 15.2 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$285.50** ($12/hr x 39 hours = $468) for this week.

76. From on or about July 4, 2016 until July 10, 2016, Plaintiff LEMBERG worked a total of 38.5 hours. However, Defendants only paid Plaintiff a total of $342.00, which compensated Plaintiff for only 28.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$120.00** ($12/hr x 38.5 hours = $462) for this week.

77. From on or about July 11, 2016 until July 17, 2016, Plaintiff LEMBERG worked a total of 45 hours. However, Defendants only paid Plaintiff a total of $288.00, which compensated Plaintiff for only 24 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$282.00** ($12/hr x 40 hours = $480; $18/hr x 5 hours = $90; $480 + $90 = $570) for this week.

78. From on or about July 18, 2016 until July 24, 2016, Plaintiff LEMBERG worked a total of 36.5 hours. However, Defendants only paid Plaintiff a total of $286.80, which compensated Plaintiff for approximately 23.9 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$151.20** ($12/hr x 36.5 hours = $438) for this week.

79. From on or about July 25, 2016 until July 31, 2016, Plaintiff worked a total of 35 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$420.00** ($12/hr x 35 hours = $420) for this week.

80. From on or about August 1, 2016 until August 7, 2016, Plaintiff LEMBERG worked a total of 43 hours. However, Defendants only paid Plaintiff a total of $315.00, which compensated Plaintiff for only 26.25 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$219.00** ($12/hr x 40 hours = $480; $18/hr x 3 hours = $54; $480 + $54 = $534) for this week.

81. From on or about August 8, 2016 until August 14, 2016, Plaintiff LEMBERG worked a total of 28 hours. However, Defendants only paid Plaintiff a total of $282.00, which compensated Plaintiff for only 23.5 hours of work. Accordingly, Defendants underpaid

Plaintiff LEMBERG **$54.00** ($12/hr x 28 hours = $336) for this week.

82. From on or about August 15, 2016 until August 21, 2016, Plaintiff worked a total of 27 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$324.00** ($12/hr x 27 hours = $324) for this week.

83. From on or about August 22, 2016 until August 28, 2016, Plaintiff LEMBERG worked a 44 hours. However, Defendants only paid Plaintiff a total of $318.00, which compensated Plaintiff for only 26.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$234.00** ($12/hr x 40 hours = $480; $18 x 4 hours = $72; $480 + $72 = $552) for this week.

84. From on or about August 29, 2016 until September 4, 2016, Plaintiff LEMBERG worked a total of 35.5 hours. However, Defendants only paid Plaintiff a total of $336.00, which compensated Plaintiff for only 28 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$90.00** ($12/hr x 35.5 hours = $426) for this week.

85. From on or about September 5, 2016 until September 11, 2016, Plaintiff LEMBERG worked a total of 17 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$204.00** ($12/hr x 17 hours = $204) for this week.

86. From on or about September 19, 2016 until September 25, 2016, Plaintiff LEMBERG worked a total of 28 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$336.00** ($12/hr x 28 hours = $336) for this week.

87. From on or about September 26, 2016 until October 2, 2016, Plaintiff LEMBERG worked a total of 45.5 hours. However, Defendants only paid Plaintiff a total of $324.00, which compensated Plaintiff for only 27 hours of work. Accordingly, Defendants

underpaid Plaintiff LEMBERG **$255.00** ($12/hr x 40 hours = $480; $18 x 5.5 hours = $99; $480 + $99 = $579) for this week.

88. From on or about October 3, 2016 until October 9, 2016, Plaintiff LEMBERG worked a total of 38 hours. However, Defendants only paid Plaintiff a total of $360, which compensated Plaintiff for only 30 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$96.00** ($12/hr x 38 hours = $456) for this week.

89. From on or about October 10, 2016 until October 16, 2016, Plaintiff LEMBERG worked a total of 28.5 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$342.00** ($12/hr x 28.5 hours = $342) for this week.

90. From on or about October 17, 2016 until October 23, 2016, Plaintiff LEMBERG worked a total of 35.5 hours. However, Defendants only paid Plaintiff a total of $324, which compensated Plaintiff for only 27 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$102.00** ($12/hr x 35.5 hours = $426) for this week.

91. From on or about October 31, 2016 until November 6, 2016, Plaintiff worked a total of 29 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$348.00** ($12/hr x 29 = $348) for this week.

92. From on or about November 7, 2016 until November 13, 2016, Plaintiff LEMBERG worked a total of 26.5 hours. However, Defendants only paid Plaintiff a total of $294, which compensated Plaintiff for only 24.5 hours of work. Accordingly, Defendants underpaid Plaintiff LEMBERG **$24.00** ($12/hr x 26.5 hours = $318) for this week.

93. From on or about November 14, 2016 until November 20, 2016, Plaintiff worked a total of 28 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$336.00** ($12/hr x 28 = $336) for this week.

94. From on or about December 5, 2016 until December 12, 2016, Plaintiff worked a total of 17.5 hours. However, Defendants did not pay Plaintiff LEMBERG any wages during this period, and thus underpaid Plaintiff **$210.00** ($12/hr x 17.5 = $210) for this week.

95. In total, during the 51-week period, **Defendants underpaid Plaintiff LEMBERG a total of $9,829.85.**

96. **Thus, Plaintiff LEMBERG is owed a total of $15,590.85 ($5,761.00 + $9,829.85)** in unpaid wages and overtime wages for all work performed during her employment with Defendants.

97. **Furthermore, due to Defendants' violation of the WTPA, Plaintiff LEMBERG is entitled to $5,000.00 in damages, plus costs and attorneys' fees.**

98. Defendants' failure to pay Plaintiff her proper earned wages, minimum wage, and overtime wages required by law was willful.

99. Furthermore, Defendant FABULOUS TOUCH's failure to provide Plaintiff with proper notice pursuant to the WTPA was also willful.

100. Defendants have also failed to pay Plaintiff LEMBERG a premium/additional amount for hours worked in excess of ten (10) hours per day, in violation of the NYLL.

101. Throughout all relevant time periods, upon information and belief, Defendants have also failed to maintain accurate and sufficient time records.

102. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff demands Liquidated and Punitive Damages as against all Defendants, jointly and severally.

AS A FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
MINIMUM WAGE

103. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

104. Defendants willfully employed Plaintiff in the aforementioned enterprise and failed to compensate Plaintiff at the required minimum hourly rate for her employment.

105. Defendants' failure to pay Plaintiff the mandated minimum hourly pay in accordance with the Act was a direct violation of the Act, specifically 29 U.S.C. § 206.

106. Defendants' failure to pay proper minimum wages for each hour worked was willful within the meaning of 29 U.S.C. § 255.

107. Defendants' failure to comply with the FLSA caused Plaintiff to suffer loss of wages.

AS A SECOND CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT
OVERTIME

108. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

109. Defendants have willfully employed Plaintiff for workweeks longer than forty (40) hours and have failed to compensate Plaintiff for her employment in excess of forty (40) hours per week at a rate of at least one and one-half times the rate at which she was employed.

110. Defendants have failed to pay overtime wages to Plaintiff as required by the FLSA, 29 U.S.C. §201 et seq. and its implementing regulations.

111. Defendants' failure to pay Plaintiff overtime pay in accordance with the FLSA is a direct violation of the FLSA, specifically 29 U.S.C. §207.

112. Defendants' failure to pay proper overtime wages for each hour worked over forty (40)

per week is willful within the meaning of 29 U.S.C. §255.

113. Defendants' failure to comply with the FLSA has caused Plaintiff to suffer loss of wages.

AS A THIRD CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW § 652(1)
MINIMUM WAGE

114. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

115. Plaintiff was an employee of Defendants within the meaning of New York Labor Law.

116. Defendants failed to pay Plaintiff the required minimum hourly wage rate for one hour of work.

117. Defendants violated Plaintiff's right to minimum wage pay under § 652(1); New York Labor Law, Article 19.

118. Defendants also violated New York's Minimum Wage Order of 12 NYCRR Part No. 142.

119. On account of such violations, Defendants are liable to Plaintiff for actual, statutory and liquidated damages.

120. Defendants' actions were willful.

121. Defendants' failure to comply with the New York State Labor Law and New York's Minimum Wage Order caused Plaintiff to suffer loss of wages.

AS A FOURTH CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW
OVERTIME

122. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

123. Defendants have employed Plaintiff within the meaning of NYLL §§ 2, 190, and 651.

124. Defendants have failed to pay Plaintiff a premium for hours worked in excess of forty (40) hours per week, in violation of NYLL § 170.

125. Defendants have violated Plaintiff's rights to overtime pay under Title 12 NYCRR 142-2.2.

126. Defendants' failure to comply with the NYLL overtime requirements has caused Plaintiff to suffer loss of wages and interest thereon.

127. Defendants' failure to pay proper overtime wages is willful.

128. Due to Defendants' NYLL violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid overtime wages in an amount to be determined at trial, plus an amount equal to 100% of Plaintiff's unpaid overtime wages in the form of liquidated damages, as well as attorneys' fees and costs of the action, including pre- and post- judgment interest, pursuant to NYLL §§ 198 and 663(1).

AS A FIFTH CAUSE OF ACTION
VIOLATION OF NEW YORK LABOR LAW
FAILURE TO PAY WAGES AT AGREED UPON RATE

129. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.

130. Defendants have failed and refused to pay Plaintiff "the wages earned in accordance with the agreed terms of employment," in violation of NYLL § 191(1)(d).

131. Due to Defendants' NYLL violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid wages in an amount to be determined at trial.

AS A SIXTH CAUSE OF ACTION
VIOLATIONS OF THE WAGE THEFT PREVENTION ACT

132. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if same were set forth herein fully at length.

133. Defendants failed to give Plaintiff written notice regarding: her regular rate of pay, overtime rate of pay, how Plaintiff was to be paid, her "regular payday," the official name of the employer and any other names used for business, the address and phone number of the employer's main office or principal location, in violation of NYLL § 195.

134. As this occurred for the entirety of Plaintiff's employment, Plaintiff is entitled to the maximum amount available under the law.

JURY DEMAND

135. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants:

A. Declaring that Defendants engaged in unlawful employment practices prohibited by the Fair Labor Standards Act and the New York State Labor Law by failing to pay Plaintiff earned wages, minimum wage, and overtime wages;

B. Declaring that Defendants engaged in unlawful employment practices prohibited by the New York State Labor Law by failing to give proper notice pursuant to the Wage Theft Prevention Act.

C. Awarding damages to Plaintiff for all lost wages and benefits resulting from Defendants' unlawful employment practices and to otherwise make Plaintiff whole for any losses suffered as a result of such unlawful employment practices;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff liquidated damages as a result of Defendants' willful failure to pay wages;

F. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and

G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy the Defendants' unlawful employment practices.

Dated: New York, New York
April 24, 2017

LAW OFFICES OF
YURIY MOSHES, P.C.

By: ______________________
Alex Umansky (AU7961)
Attorneys for Plaintiff
322 West 48th Street, 6th Floor
New York, NY 10036
Phone: (718) 504-6090
Fax: (646) 843-7570
aumansky@mosheslaw.com